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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement:	
No. 182	3
No. 183	5
Argument:	
I. Nos. 182 and 183. There is no occasion for a review of the orders at this time	8
II. No. 182. The court did not err in granting the Board's motion for leave to withdraw its petition for enforcement without prejudice	9
III. No. 183. If the court had jurisdiction in petitioner's case it had power to remand the cause to the Board	13
Conclusion	20

CITATIONS

Cases:	
Aetna Life Ins. Co. of Hartford, Conn. v. *Wilson*, 84 F. (2d) 330	11
Ballard v. *Searls*, 130 U. S. 50	17
Baltimore S. S. Co. v. *Phillips*, 9 F. (2d) 902, reversed on other grounds, 274 U. S. 316	17
Barrett v. *Virginian Ry Co.*, 250 U. S. 473	10
Citizens Bank v. *Davis*, 126 S. C. 175	17
City of Detroit v. *Detroit City Ry. Co.*, 55 Fed. 569	10, 11, 12
Delaware, Lackawanna & Western Ry. Co. v. *Reilstab*, 276 U. S. 1	18
Duke Power Co. v. *Greenwood Cty.*, 299 U. S. 259	17, 18
Federal Trade Comm. v. *Curtis Publishing Co.*, 260 U. S. 568	15
Federal Trade Comm. v. *Royal Milling Co.*, 288 U. S. 212	16
Goldstein v. *Philadelphia & Reading Coal & Iron Co.*, 17 F. (2d) 482	10
Hall v. *United States*, 78 F. (2d) 168	17
Hamilton-Brown Shoe Co. v. *Wolf Bros. & Co.*, 240 U. S. 251	9
International Shoe Co. v. *Federal Trade Comm.*, 280 U. S. 291	16

Cases—Continued. Page

Jensen v. *New York Life Ins. Co.*, 50 F. (2d) 512 17
Jones v. *Securities & Exchange Commission*, 298 U. S. 1 10
Kowalsky v. *American Employers Ins. Co.*, 90 F. (2d) 476 19
Metropolitan Trust Co., In re, 218 U. S. 312 18
Morgan v. *United States*, No. 581, Oct. Term, 1937, decided April 25, 1938 4
National Folding-Box & Paper Co. v. *Dayton Paper-Novelty Co.*, 91 Fed. 822 17
National Labor Relations Board, In re Petition of, No. 21, Orig., Oct. Term, 1937, decided May 31, 1938 ..... 6, 14
Podlesak v. *McInnerney*, 26 App. D. C. 399 17
Pullman's Palace Car Co. v. *Central Transportation Co.*, 171 U. S. 138 ..... 10, 12
Realty Acceptance Corp. v. *Montgomery*, 284 U. S. 547 ..... 17, 18
Roemer v. *Simon*, 91 U. S. 149 ..... 17, 18
Skinner & Eddy Corp., Ex parte, 265 U. S. 86 ..... 10, 11
Southern Ry. Co. v. *St. Louis Hay & Grain Co.*, 214 U. S. 297 15
Texas & Pac. Ry. v. *Interstate Commerce Commission*, 162 U. S. 197 15
United Motors Service v. *Tropic-Aire*, 57 F. (2d) 479 12
United States v. *Mayer*, 235 U. S. 55 18
United States v. *Minn. & N. W. R. Co.*, 18 How. 241 12

Statutes:

Federal Trade Commission Act (Act of Sept. 26, 1914, c. 311, 38 Stat. 719; U. S. C., Title 15, Sec. 45):
Sec. 5 15

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Sup. II, Sec. 151 *et seq.*):
Sec. 10 (d) 21
Sec. 10 (e) 12, 15, 19, 21
Sec. 10 (f) 14, 23

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 182

FORD MOTOR COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

No. 183

FORD MOTOR COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The orders sought to be reviewed were entered without opinion (R. 51, 108) and are unreported. The order of the National Labor Relations Board appears at R. 3.

JURISDICTION

The orders of the court below sought to be reviewed were entered on May 5, 1938, and June 10, 1938, respectively (R. 51, 108). The petition for writs of certiorari was filed on July 7, 1938. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

In No. 182

Whether the Circuit Court of Appeals erred in granting the motion of the National Labor Relations Board for leave to withdraw its petition for enforcement so that the Board might set aside its order and take further proceedings.

In No. 183

Whether, when a petition to review an order of the National Labor Relations Board has been filed in the Circuit Court of Appeals, the court has power to remand the cause to the Board for the purpose of setting aside the Board's findings and order and taking further proceedings.

STATUTE INVOLVED

Pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Sup. II, Sec. 151 *et seq.*) are set forth in an appendix to this brief.

STATEMENT

No. 182

On January 7, 1938, pursuant to Section 10 (e) of the National Labor Relations Act, the Board filed in the court below in No. 182 (No. 7919 below, hereinafter called the Board's case) a petition for enforcement of its order issued pursuant to Section 10 (c) of the Act against petitioner on December 22, 1937, and at the same time filed a certified transcript of the record in the proceeding before the Board (R. 1, 6).[1] On April 11, 1938, petitioner filed an answer to the Board's petition for enforcement (R. 9), contesting the validity of the Board's order on various grounds including the contention that petitioner had been denied a full and fair hearing in that from August 3, 1937 (when the proceedings before the trial examiner designated by the Board were transferred to the Board in accordance with Article II, Section 37 of the Board's Rules and Regulations, Series 1, as amended) until December 23, 1937 (when the Board's decision and order were served upon petitioner) the Board did not communicate with petitioner with respect to the proceeding and did not afford petitioner an opportunity to object or except before the Board to any intermediate report or to any proposed findings of fact or order (R. 12).

[1] The certified transcript was supplemented on January 10, 1938, to include petitioner's return to the Board's decision and order (R. 8).

The answer prayed that the Board's petition be denied and dismissed and that the Board's order be set aside and the proceeding be remanded to the Board with directions to dismiss the complaint (R. 21).

On May 2, 1938, following the decision of this Court in *Morgan* v. *United States*, No. 581, October Term, 1937, decided April 25, 1938, the Board filed in the court below a motion for leave to withdraw without prejudice its petition for enforcement, and to withdraw the transcript of record filed in the court (R. 36). The Board's motion papers, adverting to the *Morgan* decision and to petitioner's answer, stated that if the motion were granted the Board would then set aside its said order, pursuant to Section 10 (d) of the Act, issue proposed findings to which the parties would be permitted to file exceptions and if they so desired to argue objections before the Board, and thereafter make its decision and order or take such further or other action as might be deemed advisable (R. 37). On May 5, 1938, petitioner filed a memorandum in opposition to the Board's motion (R. 41). On the same date the court granted the Board's motion (R. 51). On the following day, May 6, 1938, the Board served, pursuant to said order of the court, and in furtherance of the purpose set forth in its papers filed with the court, notice on petitioner that on May 10, 1938,[2]

[2] In view of the wording of Section 10 (d), the Board deemed such notice appropriate, rather than a forthwith setting aside of its order.

unless sufficient cause to the contrary should then appear, the Board would vacate and set aside its findings and order of December 22, 1937, for the purpose of further proceedings before the Board (R. 54).. On May 10, 1938, petitioner having objected that by reason of the pendency of a petition to review the Board's order filed by petitioner (more fully explained in the following paragraph, in No. 183, No. 8019 below, hereinafter called petitioner's case), the Board was without jurisdiction to proceed pursuant to its notice of May 6, the Board held its action under advisement (R. 87). On June 4, 1938, petitioner filed a motion to vacate the court's order of May 5 granting the Board's motion for leave to withdraw (R. 56).[3] This motion was denied on June 10, 1938 (R. 58).

No. 183

Prior to the court's order of May 5 granting the Board's motion to withdraw, but subsequent to the

[3] The Board had not physically withdrawn from the court either its petition for enforcement or the certified transcript of record, believing such action unnecessary in view of the fact that it had exercised its leave by its notice of May 6, a copy of which was filed in the court on May 9 (R. 54, 80). One ground of petitioner's opposition to the Board's motion to withdraw was that the physical withdrawal of the record would prejudice its right to petition for a writ of certiorari (R. 49).

To avoid any conceivable doubt as to the Board's discontinuance, on June 2, 1938, after receipt of notice of petitioner's motion to vacate the order of May 5, the Board filed a formal withdrawal of its petition for enforcement (R. 55).

service and filing of said motion, petitioner, on May 4, 1938, initiated its case, No. 183, pursuant to Section 10 (f) of the Act, by filing a petition for a review of and to set aside the Board's order of December 22, 1937, being the same order of the Board involved in No. 182 (R. 62). On the same date petitioner filed a motion for an order directing that the causes be consolidated and that the transcript of record filed in the Board's case be deemed to be filed in petitioner's case (R. 39). On May 5, 1938, petitioner filed in its case a motion noticed for May 9, 1938, for an order directing that the certified transcript of record filed in the Board's case be deemed to have been filed in petitioner's case, or that the Board provide petitioner with a certified transcript of the entire record in the proceeding before the Board[4] and that the Board be enjoined from taking any action until 5 days thereafter (R. 78). On May 9, 1938, notwithstanding the further proceedings then in progress and pending before the Board, the court, amending its order of May 5 in so far as it permitted the withdrawal of the certified transcript of record in the Board's case, ordered that the certified transcript of record be and remain in the files of the court (R. 54), and further ordered that such transcript be deemed to have been filed

[4] Petitioner at no time made a request of the Board for a certified transcript of the record (see R. 78–9). Cf. *In re Petition of National Labor Relations Board*, No. 21, Original, October Term, 1937, decided May 31, 1938.

in petitioner's case as of the date of the filing of its petition for review (R. 80). Following the decision of this court in *In re Petition of National Labor Relations Board*, No. 21, Original, October Term, 1937, decided May 31, 1938 (reprinted R. 90), the Board on June 2, 1938, filed in petitioner's case a motion to vacate and set aside the order directing that the certified transcript of the record filed in the Board's case be deemed to have been filed in petitioner's case as of the date of the petition for review (R. 85), and also filed a motion to remand the cause to the Board for further proceedings in the event that the court denied the motion to vacate (R. 103). The Board in its motion to remand advised the court that if the motion were granted the Board forthwith would set aside its findings and order of December 22, 1937, issue proposed findings to which the parties would be permitted to file exceptions and argue objections before the Board if they so desired, and thereafter, upon reconsideration of the entire case, make its decision and order, or take such further action as might be deemed advisable (R. 104). On June 10, 1938, the court issued an order denying the Board's motion to vacate but granting its motion to remand the cause to the Board for the purpose of setting aside its findings and order of December 22, 1937, issuing proposed findings, and making its decision and order upon a reconsideration of the entire case (R. 108). The court stayed the order of remand and the Board's withdrawal of its petition for en-

forcement for 30 days pending application by petitioner to this Court for writs of certiorari and until final disposition thereof by this Court (R. 108). The court sustained objections to interrogatories which had been propounded by petitioner (R. 108) and denied various motions and applications of petitioner not now in question or material (R. 58, 108).

The petition herein seeks a writ of certiorari to review the order of May 5, 1938, in the Board's case, granting the Board's motion for leave to withdraw its petition for enforcement without prejudice, and a writ of certiorari to review the order of June 10, 1938, in petitioner's case, remanding the cause to the Board.

ARGUMENT

I

Nos. 182 and 183

THERE IS NO OCCASION FOR A REVIEW OF THE ORDERS AT THIS TIME

The effect and purpose of the orders sought to be reviewed are to permit the Board to set aside its findings and order issued against petitioner on December 22, 1937, and have further proceedings. The questions now presented are raised in an interim stage of the proceedings. Petitioner has not made a showing that this is one of the "extraordinary cases" in which the writ of certiorari will be granted prior to the final disposition of a contro-

versy. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U. S. 251, 258.

Petitioner is not prejudiced except by the prospect of participating in further proceedings. Indeed, the setting aside of the Board's order was the very relief prayed by petitioner in its answer (R. 21) and prior thereto, on January 3, 1938, in its petition to the Board to vacate and set aside the Board's decision and order and for rehearing (R. 31). Likewise, the opportunity to file exceptions to proposed findings of fact and to argue objections before the Board (R. 37, 104) offers petitioner the very opportunity which it complained had been denied to it (R. 12). Any order which the Board may make against petitioner in the further proceedings to be had can be tested upon petition to review or enforce, and at such time any question of the court's power to issue the orders now sought to be reviewed can be raised, and all essential rights of petitioner determined. Until then, there is no occasion for this Court to determine the validity of the orders.

II

No. 182

THE COURT DID NOT ERR IN GRANTING THE BOARD'S MOTION FOR LEAVE TO WITHDRAW ITS PETITION FOR ENFORCEMENT WITHOUT PREJUDICE

It is well settled for the Federal courts that a plaintiff has an absolute and substantial right to

dismiss or withdraw his complaint at law or his bill in equity unless some plain legal prejudice will result to the defendant other than the prospect of a second litigation upon the subject matter. *Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 19; *Ex parte Skinner & Eddy Corporation*, 265 U. S. 86, 93; *Barrett* v. *Virginian Ry. Co.*, 250 U. S. 473, 476; *Pullman's Palace Car Co.* v. *Central Transportation Co.*, 171 U. S. 138, 146; *City of Detroit* v. *Detroit City Ry. Co.*, 55 Fed. 569 (C. C. E. D. Mich.); *Goldstein* v. *Philadelphia & Reading Coal & Iron Co.*, 17 F. (2d) 482 (C. C. A. 3d). In the absence of contrary statutory provision, this rule should apply to proceedings involving the enforcement of orders of administrative tribunals. Cf. *Jones* v. *Securities & Exchange Commission*, *supra*, p. 19. In No. 182, the Board may be regarded as the plaintiff below. The only relief to which petitioner herein was entitled under the statute was to have the order set aside or modified; the Board sought to withdraw its order for the purpose of setting it aside and taking further proceedings. The only prejudice which petitioner can possibly suffer is the prospect of engagement in further proceedings. This Court has repeatedly said that this is not the sort of prejudice which can bar a plaintiff from exercising his absolute right to withdraw. (See cases cited above.)

Petitioner attempts to meet this insuperable difficulty in its position by claiming that it became

entitled to "affirmative relief" upon the filing of the Board's petition for enforcement and petitioner's answer thereto. Petitioner nowhere makes clear what "affirmative relief" it is entitled to; apparently it comprehends within these words the setting aside of the Board's order, if invalid. A designation of such relief as "affirmative" is a misuse of the term. The setting aside of an order, having no greater effect than a denial of the prayer of a petition to enforce, is not "affirmative relief" barring the plaintiff's right to a nonsuit. Cf. *Aetna Life Ins. Co. of Hartford, Conn.* v. *Wilson,* 84 F. (2d) 330, 331 (C. C. A. 4th). Moreover, even a defendant who has filed a proper prayer or cross-bill for affirmative relief must show that the dismissal would result in prejudice other than the mere prospect of future litigation. *Ex parte Skinner & Eddy Corp.,* 265 U. S. 86, 93–94; *City of Detroit* v. *Detroit City Ry. Co.,* 55 Fed. 569, 575 (C. C. E. D. Mich.); *Aetna Life Ins. Co. of Hartford, Conn.* v. *Wilson,* 84 F. (2d) 330, 331 (C. C. A. 4th). Petitioner has made no such showing.[5]

[5] In *Ex parte Skinner & Eddy Corp., supra,* relied on by petitioner, the Court stated that a case would not be dismissed to the prejudice of a defendant who had sought affirmative relief. "Having been put to the trouble of getting his counter case properly pleaded and ready, he may insist that the cause proceed to a decree." 265 U. S. at 94. But like the Government's unsuccessful objection in the *Skinner & Eddy* case, petitioner's opposition to the withdrawal was not predicated upon any time or expense given to the preparation of its case for "affirmative relief." See memorandum in opposition, R. 41–50.

Further, even after a showing of prejudice to the defendant, a court, in the exercise of a sound discretion, may grant a motion to dismiss or withdraw. *Pullman's Palace Car Co.* v. *Central Transportation Co.*, 171 U. S. 138, 146; *City of Detroit* v. *Detroit City Ry. Co.*, 55 Fed. 569, 573 (C. C. E. D. Mich.); *United Motors Service* v. *Tropic-Aire*, 57 F. (2d) 479, 488 (C. C. A. 8th). Likewise it may permit the discontinuance of an appeal from a lower court notwithstanding the resistance of the appellee. *United States* v. *Minn. & N. W. R. Co.*, 18 How. 241. Petitioner makes no claim that the court abused its discretion. Consequently there is no occasion for granting certiorari.

Petitioner contends further that the Act provides without limitation that once the court acquires jurisdiction it can not relinquish it, but is under a duty to proceed forthwith to a decree (Pet. p. 16). The Act does not require the court to enter a decree; it provides that the court "shall have power" so to do (Section 10 (e)). Petitioner's argument leads to the absurd conclusion that it would be mandatory for the court to inquire into the merits and proceed to a decree even where neither party desired it to and where the petitioning party had abandoned its suit.

III

No. 183

IF THE COURT HAD JURISDICTION AT ALL IN PETITIONER'S CASE IT HAD POWER TO REMAND THE CAUSE TO THE BOARD

In No. 183 petitioner seeks to review the order of the court below remanding the cause to the Board for the purpose of setting aside the Board's order and taking further proceedings. The order of the Board here involved is the order of December 22, 1937, the same order involved in No. 182. Petitioner brought its case, May 4, 1938, only for the purpose of preventing the Board from setting aside its order and proceeding as it had proposed in its motion for leave to withdraw its case, filed May 2, 1938. See R. 49–50. If there is no occasion to review the order involved in No. 182, there is certainly no occasion to review the order involved in No. 183. The former order was sought in order to permit the Board to take further proceedings. Such order being proper, the proceedings should not be halted merely because petitioner chose to file in the court below a redundant petition to review the Board's order.

It is necessary to point out that there is serious doubt whether the court below had jurisdiction to take any action in petitioner's case. A certified copy of the transcript of record was never filed by petitioner in the manner prescribed by the statute. It was only by virtue of the accident of the physical

presence in the files of the court of the record, which had been previously filed in the Board's case (although the court had, on May 5, granted the Board's motion to withdraw its petition for enforcement and the transcript of record), which enabled the court, on May 9, to order that the transcript not only remain in its files but be deemed to have been filed in petitioner's case (R. 80). Under the decision of this Court in *In re Petition of National Labor Relations Board, supra*, it is questionable whether the court had jurisdiction to make such an order.* The Board believes that the court should have granted the Board's motion to vacate the order of May 9 (R. 85) instead of its alternative motion to remand (R. 103), for the reason that the court had not obtained jurisdiction of the petitioner's case. The Board, however, does not petition for a writ of certiorari, for the granting of its motion to remand has the same practical result as the granting of its motion to vacate would have had, namely, to permit the Board to set aside its order against petitioner and take further proceedings.

If jurisdiction in the court be assumed, as apparently is done by petitioner, remanding the cause

*The transcript of record deemed filed was not the transcript of the "entire" record, as required by Section 10 (f) of the Act. The record which had been certified and filed in the court in January in the Board's case obviously did not include the Board's notice of May 6 and did not exhibit "the Board's final action" (*In re Petition of National Labor Relations Board, supra.*)

was an appropriate method by which to permit the Board to complete the further proceedings which it desired to take and which were pending before it. The court properly decided to await the completion of those proceedings and not to embark upon a determination of the validity of an order which petitioner wished to have set aside and which the Board itself had given notice that it would set aside. The Act contains no provision limiting the inherent power of a circuit court of appeals to remand the cause with or without deciding the merits.

As early as *Texas & Pac. Ry.* v. *Interstate Commerce Commission*, 162 U. S. 197, 239, it was stated, even in the absence of statutory authorization, that if "the [Interstate Commerce] Commission has failed in its proceedings to give notice to the alleged offender, or has unduly restricted its inquiries upon a mistaken view of the law, the court * * * should * * * send the case back to the Commission to be lawfully proceeded in." See also *Southern Ry. Co.* v. *St. Louis Hay & Grain Co.*, 214 U. S. 297, 302. And the existence of this power to expedite, notwithstanding the absence of an express statutory provision, has been more recently recognized in cases involving the analogous Federal Trade Commission Act.[7] *Federal Trade*

[7] Like § 10 (e) of the National Labor Relations Act, § 5 of the Federal Trade Commission Act provides that upon the Commission's filing of a petition to enforce and transcript, the court "shall have power to make and enter * * * * a decree affirming, modifying, or setting aside the order of

Comm. v. *Curtis Publishing Co.*, 260 U. S. 568, 580, 583; *International Shoe Co.* v. *Federal Trade Commission*, 280 U. S. 291, 297; *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 218.

Petitioner takes the view that the court may remand a case to the Board only for the one reason specifically stated in the statute, i. e., for the taking of additional evidence. The plain implication is that courts have no inherent powers when dealing with orders of administrative tribunals, that they can do only what Congress expressly tells them to do. Petitioner cites no authority for this view and it is opposed by the common practice of the courts in connection with other administrative tribunals. (See cases cited above.) There is no reason why, in their review of orders of administrative tribunals, courts should not exercise familiar, procedural, judicial powers not repugnant to the statutory scheme.

It has never been held that a circuit court of appeals in remanding a case for further proceedings must first determine the validity of the order of the administrative tribunal and set it aside if found to be invalid for any reason. Familiar analogous situations may be cited. An appellate court may return a record to a lower court on the application of

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the commission." The statute contains a provision for orders for additional evidence to be taken before the Commission upon application by either party, and no other express provision for remand. Act of September 26, 1914, c. 311, 38 Stat. 719 (U. S. C., Title 15, § 45).

the latter so that further proceedings or a rehearing may be had below, without deciding on the merits. *Roemer* v. *Simon*, 91 U. S. 149; *Baltimore S. S. Co.* v. *Phillips*, 9 F. (2d) 902 (C. C. A. 2d), reversed on other grounds, 274 U. S. 316. See *Realty Acceptance Corp.* v. *Montgomery*, 284 U. S. 547; *Hall* v. *United States*, 78 F. (2d) 168, 170 (C. C. A. 10th). Even without such an application an appellate court may remand to the lower court for further supplementary proceedings without deciding the appeal. *Ballard* v. *Searls*, 130 U. S. 50; *Jensen* v. *New York Life Ins. Co.*, 50 F. (2d) 512 (C. C. A. 8th); see *Podlesak* v. *McInnerney*, 26 App. D. C. 399. A court of equity has inherent power to recommit a special master's report upon his application for a withdrawal of it for reconsideration by him. *National Folding-Box & Paper Co.* v. *Dayton Paper-Novelty Co.*, 91 Fed. 822 (C. C. S. D. Ohio); *Citizen's Bank* v. *Davis*, 126 S. C. 175. No reason or authority can be advanced for a contention that the inherent power which courts possess in these situations may not equally be exercised when orders of administrative tribunals are in question.

Petitioner relies on *Duke Power Co.* v. *Greenwood County*, 299 U. S. 259, for the proposition that a circuit court of appeals may not remand a case to the district court with either direction or permission to take further proceedings and thereafter enter a new decree, without first setting aside the decree or order appealed from. In that case

the term of the district court had apparently expired,[5] and the order of remand was so vague and ambiguous that the district court failed to understand that it was required to set the decree aside. Instead it permitted evidence to be introduced on a narrow point and simply adjudged that its original decree should not be set aside. Despite this misunderstanding and mistrial, the Circuit Court of Appeals proceeded to pass upon the validity of an Act of Congress and reversed the decree with directions to dismiss the bill for want of equity. Here the order of the Circuit Court of Appeals is plain; the cause is remanded to the Board "for the purpose of setting aside its findings and order of December 22, 1937, and issuing proposed findings, and making its decision and order upon a reconsideration of the entire case" (R. 108). The essential defect of the proceedings in the *Duke* case, the fail-

[5] See 299 U. S. 263, 265. This Court stated (p. 268): "*In this instance*, the Circuit Court of Appeals could not leave in effective operation the final decree of the District Court and at the same time revest that court with jurisdiction to retry the cause." (Italics added.) The expiration of the term left the district court powerless to change its decree (*In re Metropolitan Trust Co.*, 218 U. S. 312, 320; *United States* v. *Mayer*, 235 U. S. 55, 67; *Delaware, Lackawanna & Western R. Co.* v. *Rellstab*, 276 U. S. 1, 5) and rendered the circuit court of appeals powerless to bestow such authority upon the district court. *Realty Acceptance Corp.* v. *Montgomery*, 284 U. S. 547. In the case last cited this Court recognized that under *Roemer* v. *Simon*, 91 U. S. 149, a remand for trial without a vacatur would be proper where the term had not expired and where the remand was sought by the trial court.

ure to vacate the decree of the district court, is thus absent here, since the Board understands that it is to vacate its order, and the remand is in response to the Board's request that it be given the opportunity to do so.

Much of petitioner's argument reduces itself to the suggestion that the power to remand might be abused in some hypothetical case (Pet. Br. 22–25) [*] and does not really militate against the existence of the power. Here petitioner besought the court below to set aside the Board's order because of an alleged failure to grant a fair hearing. The Board then moved that the cause be remanded so that it might set aside its order and do what petitioner claimed it should have done. The court, in the exercise of its inherent powers, granted the motion. No claim is made of abuse of discretion in the exercise of that power. We are unable to see any justification for petitioner's claim that the action of the court below should be reviewed by this Court.

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[*] As for petitioner's fear that defects complained of in the petition to review and "thus directed to the attention of the Board" may prompt the Board to attempt to revest itself with jurisdiction, it should be noted that, under § 10 (e) of the Act, no objection that has not been urged before the Board may be considered by the court, except in extraordinary circumstances, in which event the Board might properly be afforded an opportunity to reconsider its decision and correct any errors. Cf. *Kovalsky* v. *American Employers Ins. Co.*, 90 F. (2d) 476, 480 (C. C. A. 6th).

CONCLUSION

There is no conflict in the decisions. No question of present importance is presented. There is no occasion for the granting of writs of certiorari.

Respectfully submitted.

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AUGUST 1938.

APPENDIX

Paragraphs (d), (e) and (f) of Section 10 of the National Labor Relations Act (49 Stat. 449; 29 U. S. C., Secs. 151–166) provide as follows:

> (d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.
>
> (e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have

power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or

certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggreievd by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

U. S. GOVERNMENT PRINTING OFFICE: 1934